



# Report from the Department of Justice

**March 8, 2019**

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# Statistics

Reporting Period: 11/16/18 – 2/15/19

**I. Total Petitions Filed in the United States Court of Federal Claims this reporting period: 307**

A. Minors: 10

B. Adults: 297

# Statistics

Reporting Period: 11/16/18 – 2/15/19

## II. Total Petitions Adjudicated this reporting period: 153

### A. Compensated: 125

#### i. Cases conceded by HHS: 41

1. Decision awarding damages: 2
2. Decision adopting Proffer: 39
3. Decision adopting Settlement: 0

#### ii. Cases not conceded by HHS: 84

1. Decision awarding damages: 1
2. Decision adopting Proffer: 0
3. Decision adopting Settlement: 83

### B. Not Compensated/Dismissed: 28

- i. Decision dismissing Non-OAP: 27
- ii. Decision dismissing OAP: 1

# Statistics

Reporting Period: 11/16/18 – 2/15/19

**III. Total Petitions Voluntarily Withdrawn this reporting period (no judgment will be issued): 4**

# Appeals: U.S. Court of Appeals for the Federal Circuit

## Decided Cases

### Appeals by Petitioner:

- *Oliver v. HHS* (Entitlement): Affirmed
- *Olson v. HHS* (Entitlement): Affirmed
- *Rogero v. HHS* (Entitlement): Affirmed

### Appeals by Respondent:

- *Fairchild v. HHS* (Entitlement (Interim Damages)): Appeal Dismissed on Respondent's Unopposed Motion

# Appeals: U.S. Court of Appeals for the Federal Circuit

## Pending Cases

### Appeals by Petitioner:

- *Austin v. HHS* (Entitlement)
- *Boatmon v. HHS* (Entitlement)
- *Kreizenbeck v. HHS* (Entitlement)
- *McCollum v. HHS* (Entitlement)
- *Miles v. HHS* (Entitlement)
- *Moczek v. HHS* (Entitlement)
- *R.K. v. HHS* (Attys' Fees and Costs)

### Appeals by Respondent:

- *McCulloch v. HHS* (Attys' Fees)

# Appeals: U.S. Court of Federal Claims

## Decided Cases

### Appeals by Petitioner:

- *Bender v. HHS* (Entitlement): Affirmed
- *Byrd v. HHS* (Entitlement/Dismissal for Failure to Prosecute): Affirmed
- *Cottingham v. HHS* (Attys' Fees): Affirmed
- *De Souza v. HHS* (Attys' Fees): Affirmed in part
- *Dougherty v. HHS* (Entitlement): Affirmed
- *Gipple v. HHS* (Entitlement): Affirmed
- *Kreizenbeck v. HHS* (Entitlement): Affirmed
- *Miles v. HHS* (Entitlement): Affirmed
- *Prepejchal v. HHS* (Entitlement): Affirmed
- *Sanchez v. HHS* (Entitlement): Affirmed
- *Skinner-Smith v. HHS* (Entitlement): Remanded

# Appeals: U.S. Court of Federal Claims

## Decided Cases

### Appeals by Respondent:

- None at this time

# Appeals: U.S. Court of Federal Claims

## Pending Cases

### Appeals by Petitioner:

- *Gaiter v. HHS* (Entitlement)
- *Heddens v. HHS* (Entitlement)
- *L.M. v. HHS* (Entitlement)
- *L.P. p/o/g Petty v. HHS* (Attys' Fees & Costs)
- *Maciel v. HHS* (Entitlement)
- *Mullen v. HHS* (Attys' Fees)
- *Webb v. HHS* (Entitlement)
- *Wyatt v. HHS* (Entitlement)

### Appeals by Respondent:

- *Lozano v. HHS* (Entitlement)
- *Tenneson v. HHS* (Entitlement)

\*Yellow cases are new this reporting period

# Scheduled Oral Arguments

## U.S. Court of Appeals for the Federal Circuit:

- *R.K. v. HHS* on 3/11/2019

## U.S. Court of Federal Claims:

- None scheduled at this time

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
1. Flu	GBS; CIDP	7 years 0 months
2. HPV	Systemic Lupus Erythematosus	5 years 10 months
3. Flu	TM	5 years 5 months
4. Flu	Polyarthritis	3 years 11 months
5. TDaP; MMR	CIDP	3 years 7 months
6. HPV	Cardiac Arrest; Death	3 years 3 months
7. Flu	TM	2 years 10 months
8. Flu	TM	2 years 6 months
9. Flu	Hearing Loss; Vertigo	2 years 5 months
10. TDaP	Optic Neuritis	2 years 5 months
11. Flu	SIRVA	2 years 5 months

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
12. Flu	GBS	2 years 4 months
13. Flu	TM	2 years 4 months
14. Flu	SIRVA; Shingles	2 years 4 months
15. Flu	GBS	2 years 2 months
16. Flu	TM; Cervical Myelopathy; Residual Myelomalacia; Syringomyelia	2 years 2 months
17. Tdap	SIRVA	2 years 2 months
18. Flu	SIRVA	2 years 2 months
19. Flu	SIRVA	2 years 2 months
20. Flu	GBS	2 years 1 months
21. Tdap	GBS	2 years 1 months
22. DTap; IPV; Hib; Rotavirus; PCV	TM	2 years

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
23. Hep B	SIRVA	2 years
24. Flu	SIRVA	2 years
25. Flu	SIRVA	1 year 11 months
26. Flu	GBS	1 year 11 months
27. Flu	TM	1 year 11 months
28. Heb B	TM	1 year 10 months
29. Flu	Arm Nerve Injury	1 year 10 months
30. Flu	SIRVA	1 year 10 months
31. Flu	GBS	1 year 9 months
32. Flu	SIRVA	1 year 9 months
33. Flu	Parsonage-Turner Syndrome	1 year 8 months

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
34. Flu	SIRVA	1 year 8 months
35. TD	SIRVA	1 year 8 months
36. Flu	SIRVA	1 year 8 months
37. Flu	GBS	1 year 8 months
38. Flu	SIRVA	1 year 7 months
39. Flu	TM	1 year 7 months
40. Flu	SIRVA	1 year 7 months
41. Flu	SIRVA	1 year 7 months
42. Flu	Bell's Palsy	1 year 7 months
43. Flu	SIRVA	1 year 7 months
44. Tdap	GBS	1 year 6 months

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
45. Flu	SIRVA	1 year 6 months
46. Flu	TM	1 year 6 months
47. Flu	TM	1 year 5 months
48. PCV	SIRVA	1 year 5 months
49. Flu	SIRVA	1 year 5 months
50. Flu	SIRVA	1 year 5 months
51. Meningococcal	Autoimmune Neuroretinitis; Optic Neuritis	1 year 5 months
52. Flu	GBS	1 year 4 months
53. Flu	GBS	1 year 4 months
54. Flu	SIRVA	1 year 4 months
55. Flu; MMR	GBS	1 year 4 months

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
56. Flu	SIRVA	1 year 4 months
57. Flu	SIRVA	1 year 4 months
58. Hep B	SIRVA	1 year 4 months
59. Flu	SIRVA	1 year 4 months
60. Flu	GBS	1 year 4 months
61. Flu	SIRVA	1 year 3 months
62. Flu	SIRVA	1 year 3 months
63. DTaP; IPV; Flu	CIDP	1 year 3 months
64. Flu	SIRVA	1 year 3 months
65. Flu	Brachial Neuritis	1 year 3 months
66. Flu	SIRVA	1 year 3 months

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
67. Flu	SIRVA	1 year 3 months
68. Flu	SIRVA	1 year 3 months
69. Flu	SIRVA	1 year 3 months
70. Flu	SIRVA	1 year 3 months
71. Tdap	SIRVA	1 year 3 months
72. Flu	SIRVA	1 year 2 months
73. Flu	Systemic Inflammatory Response Syndrome	1 year 2 months
74. Tdap	GBS	1 year 2 months
75. Flu	SIRVA	1 year 2 months
76. Flu	SIRVA	1 year 2 months
77. Flu	CIDP	1 year 2 months

\*Terms of compensated settlements memorialized by Stipulation

# Adjudicated Settlements\*

Reporting Period: 11/16/18 – 2/15/19

Vaccine(s)	Alleged Injury(ies)	Petition Filing to Settlement Filing
78. Flu	SIRVA	1 year 1 months
79. Flu	Left Shoulder Neuritis	1 year 1 months
80. Flu	SIRVA	1 year 1 months
81. Flu	Parsonage-Turner Syndrome	10 months
82. Flu	SIRVA; Brachial Neuritis	9 months
83. Flu	GBS	2 months
*Terms of compensated settlements memorialized by Stipulation		

# Appendix

# Glossary of Terms

- **Petitions Adjudicated:** Final judgment has entered on the petition in the United States Court of Federal Claims.
- **Final Judgment:** Clerk of Court, United States Court of Federal Claims, enters judgment awarding or denying compensation.
- **Compensable:** Petitioner received an award of compensation, which can be achieved through a concession by HHS, settlement, or decision on the merits by the special master, United States Court of Federal Claims.
- **Conceded by HHS:** HHS concluded that a petition should be compensated based on review and analysis of the medical records.

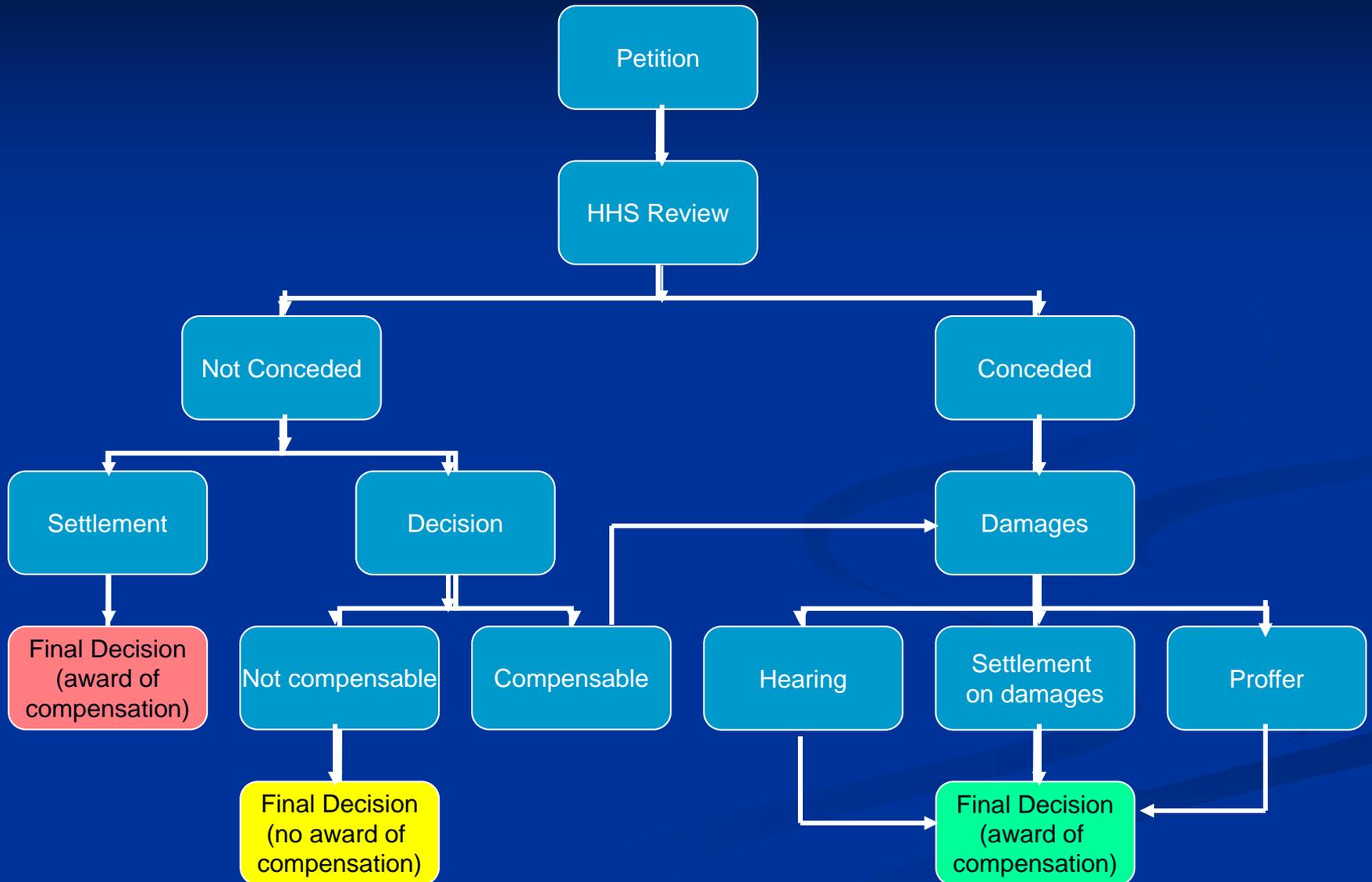
# Glossary of Terms

- **Settlement:** Petition is resolved via a negotiated settlement between the parties, and results in the filing of a stipulation that memorializes the terms of the settlement.
- **Decision:** Special Master issues decision on the merits of the petition.
- **Non-compensable/Dismissed:** Petition dismissed.
- **Proffer:** After discussions between the parties regarding a reasonable amount of damages, respondent will file a suggested award of compensation, known within the Program as a “Proffer,” which is also agreed to by petitioners and their counsel. The Proffer is reviewed by the presiding special master to determine that it represents a reasonable measure of the amount of the award and describes compensation pursuant to 42 U.S.C. § 300aa-15(a). The special master issues a final decision consistent with the terms of the Proffer.

# Glossary of Terms

- **Affirmed:** Case has been reviewed on appeal, and the court on appeal agreed with the decision of the lower court.
- **Reversed:** Case has been reviewed on appeal, and the court on appeal disagreed with the decision of the lower court. The court on appeal typically provides reasons for reversing, and that decision becomes the law of the case, absent further appeal.
- **Remanded:** Case has been reviewed on appeal, and the reviewing court has a problem with the decision, and sends it back to the lower court. Typically, a case is remanded with a specific question or issue for the lower court to address.
- **Vacated:** Case has been reviewed on appeal, and the reviewing court has voided the lower court's decision.

# Petition Processing in the Office of Special Masters



# Levels of Appeal in Vaccine Act Cases

**U.S. Supreme Court**

**U.S. Court of Appeals for the  
Federal Circuit**

**U.S. Court of Federal Claims**

**Office of Special Masters**

# Appeals Process

